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March 19, 2014

BY ECF

The Honorable Paul A. Crotty
United States District Court
Southern District of New York
500 Pearl Street, Chambers 1350
New York, New York 10007

DIGS NYC LLC, et al., v. G.M. Madonna & Co., LLC, et al.
Docket No. 14 Civ. 0538 (PAC)

Dear Judge Crotty:

We represent defendants G.M. Madonna & Co., LLC, Madonna & Co., LLC, Madonnaand.co.com, LLC, and Geralynn Madonna (together, "Defendants") in this action. We write in response to today's letter from plaintiffs' counsel, Daniel A. Singer, Esq., requesting an extension of time from today at 3:00 p.m. to Tuesday, March 25, 2014 at 3:00 p.m. to submit plaintiffs' reply papers on their motion -- brought on by Order to Show Cause -- for a preliminary injunction. Plaintiffs also seek an adjournment of tomorrow's hearing, scheduled at 11:30 a.m., to March 27, 2014. Defendants strenuously oppose plaintiffs' application.

This morning at 9:16 a.m., I received an email from Mr. Singer seeking Defendants' consent to the requested extension and adjournment of tomorrow's hearing. The only basis for the request was that the additional time might provide an opportunity to discuss a potential resolution of plaintiffs' baseless claims after his clients had an opportunity to review Defendants' opposition papers. (A copy of our email exchange is attached hereto.) As set forth more fully in Defendants' opposition papers (two courtesy copies of which were delivered to Your Honor this morning), plaintiffs had every opportunity, since at least November 25, 2013, when Defendants fully responded to the vast majority of plaintiffs' claims, to attempt to resolve any outstanding issues. See Declaration of Christopher J. Platt, dated March 18, 2014, ¶¶ 9-17; Declaration of Geralynn Madonna, dated March 18, 2014, ¶¶ 45, 66, 82, 85 and 90. Rather than engage in any discussion, plaintiffs chose to remain silent for four and a half months -- until March 11, 2014 -- when Mr. Singer notified Defendants and counsel that plaintiffs had commenced this lawsuit (on January 29, 2014), and were filing the instant motion the next day. Defendants therefore have no

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expectation that plaintiffs have any intention of attempting to resolve this matter prior to resolution of their motion for a preliminary injunction.

In his letter, Mr. Singer now claims as the basis for his request that Defendants' opposition papers are too voluminous for him and his clients to review in order to file reply papers prior to 3:00 p.m. today. Plaintiffs -- not Defendants -- chose to go down this road of filing an "emergency" application without communicating with Defendants or even checking to be certain that any of the alleged "infringements" even existed prior to filing their motion. It is our belief that plaintiffs have made this motion in a vexatious manner, simply to harass Defendants.

Although Mr. Singer is a solo-practitioner, we are compelled to note that Defendants' counsel is a two-person law firm with no administrative staff. Leaving aside that the motion likely could have been avoided had Mr. Singer or his clients communicated over the past four months, if Mr. Singer believed he would need more time to submit his papers, he should not have proceeded by Order to Show Cause.

Under these circumstances, particularly given that plaintiffs chose to make this "emergency" motion (which has already caused Defendants to incur substantial legal fees), there is no basis for plaintiffs' application for an extension of time or an adjournment of tomorrow's hearing. Defendants would be prejudiced by any extension or adjournment, as they are already being harmed by defending against what appears to be a frivolous and vexatious lawsuit. Defendants believe that any chance of this case being resolved amicably depends on the outcome of plaintiffs' motion.

As Mr. Singer noted in his letter, in the event that the Court grants plaintiffs' application, I respectfully request that the adjourned hearing not be scheduled between March 27, 2014 and April 2, 2014, as I am unavailable those days.

We are available at the Court's convenience to discuss this or any other matter. Thank you.

Respectfully submitted,



Robert F. Finkelstein

Enclosure

cc: Daniel A. Singer, Esq.
(by ECF)